

201401583
Efrain Rojas

This incident involves a widely publicized video that was posted on YouTube and later covered in the press:

<https://www.youtube.com/watch?v=Nqw9km17fyg>

<https://www.nydailynews.com/blogs/theshack/watch-records-arrests-man-recording-arrest-brooklyn-train-station-blog-entry-1.1705542>

In the incident, Shawn Thomas was recording as an officer stood over a person on a bench in the subway after handcuffing him. (The man was using a full-sized digital camera, not a phone). Both the officer and the man on the bench are still. PO Rojas then descends the stairs onto the platform. Upon seeing the man, PO Rojas takes out his persona cell phone and starts recording the man, walking so close to the man that PO Rojas's phone blocks the lens and obscures the scene behind him. The man asserts his right to record, and PO Rojas threatens to arrest him, then forcibly removes him from the subway system. Outside, the man attempts to continue filming PO Rojas, who then arrests him for obstructing governmental administration. The charges were all dropped by the district attorney.

PO Rojas stated (even after having seen the video) that he observed Mr. Thomas for three minutes and approached him because he believed Mr. Thomas was acting so erratically that he needed assistance, and that he only took Mr. Thomas out of the station after a crowd had formed, and after he had asked him three times to leave. The video shows that PO Rojas approached Mr. Thomas within 45 seconds of arriving on the platform, never asked if Mr. Thomas needed assistance, only asked him to leave the subway once, and forcibly ejected him nine seconds later.

The CCRB substantiated allegations of discourtesy, refusal to provide name and shield number, and abuse of authority (both for ejecting Mr. Thomas from the system and for arresting him) in addition to finding that PO Rojas lied in his CCRB interview. The NYPD compelled PO Rojas to forfeit 30 vacation days and serve a one-year probation.

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Olas Carayannis	Team: Team # 1	CCRB Case #: 201401583	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sat, 02/15/2014 5:50 PM	Location of Incident: [REDACTED]	Precinct: 77	18 Mo. SOL 08/15/2015	EO SOL 8/15/2015	
Date/Time CV Reported Tue, 02/18/2014 4:59 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 02/18/2014 4:59 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Efrain Rojas	23404	§ 87(2)(b)	TB DT32
2. An officer			TB DT32

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Renan Dai	23922	§ 87(2)(b)	TB DT32
2. SGT Jolene Maldonado	5623	§ 87(2)(b)	TB DT32

Officer(s)	Allegation	Investigator Recommendation
A . POM Efrain Rojas	Discourtesy: PO Efrain Rojas acted discourteously to § 87(2)(b) [REDACTED].	A . § 87(2)(g) [REDACTED]
B . POM Efrain Rojas	Abuse of Authority: PO Efrain Rojas refused to provide his name and shield number to § 87(2)(b) [REDACTED].	B . § 87(2)(g) [REDACTED]
C . POM Efrain Rojas	Abuse of Authority: PO Efrain Rojas ejected § 87(2)(b) [REDACTED] from the subway system.	C . § 87(2)(g) [REDACTED]
D . POM Efrain Rojas	Abuse of Authority: PO Efrain Rojas arrested § 87(2)(b) [REDACTED].	D . § 87(2)(g) [REDACTED]
E . POM Efrain Rojas	Force: PO Efrain Rojas used physical force against § 87(2)(b) [REDACTED].	E . § 87(2)(g) [REDACTED]
F . An officer	Abuse of Authority: An officer searched § 87(2)(b) [REDACTED] camera.	F . § 87(2)(g) [REDACTED]
G . An officer	Abuse of Authority: An officer damaged § 87(2)(b) [REDACTED] property.	G . § 87(2)(g) [REDACTED]
H . POM Efrain Rojas	Other: PO Efrain Rojas PO Efrain Rojas intentionally made a false official statement in violation of Patrol Guide procedure 203-08.	H . § 87(2)(g) [REDACTED]

Case Summary

On February 18, 2014, § 87(2)(b) filed the following complaint with IAB under IAB Log number 14-6029 (encl. E1-4). He had posted a video on YouTube and a number of civilians, including § 87(2)(b) who viewed this video on YouTube, but who were not present for the incident, filed complaints with the CCRB and IAB on § 87(2)(b)'s behalf (E1-10).

On February 15, 2014, at approximately 5:50 p.m., § 87(2)(b) filmed PO Efrain Rojas and PO Renan Dai as they summonsed a third party on the platform of the § 87(2)(b) in Brooklyn. PO Rojas approached § 87(2)(b) and ejected him from the station and subsequently arrested him. As a result of the interaction, the following allegations arose:

Allegation A—Discourtesy: PO Efrain Rojas acted discourteously to § 87(2)(b)

Allegation B—Abuse of Authority: PO Efrain Rojas refused to provide his name and shield number to § 87(2)(b)

Allegation C—Abuse of Authority: PO Efrain Rojas ejected § 87(2)(b) from the subway system.

Allegation D—Abuse of Authority: PO Efrain Rojas arrested § 87(2)(b)

§ 87(2)(g)

Allegation E—Force: PO Efrain Rojas used physical force against § 87(2)(b)

§ 87(2)(g)

Allegation F—Abuse of Authority: An officer searched § 87(2)(b)'s camera.

Allegation G—Abuse of Authority: An officer damaged § 87(2)(b)'s property.

§ 87(2)(g)

Allegation H—Other Misconduct: PO Efrain Rojas intentionally made a false official statement in violation of Patrol Guide procedure 203-08.

§ 87(2)(g)

This case was not eligible for mediation. The case is being investigated by IAB's Group 54 under complaint number 14-6109. § 87(4-b), § 87(2)(g)

§ 87(2)(b) This case is on the sensitive case list as a result of appearing in the following publications: The New York Daily News, Photography is Not a Crime, Metro, Gothamist, and Tech Dirt (encl. A1-18).

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b)

Statements to Medical Providers

§ 87(2)(b) received medical attention while still in custody of Transit District 32. § 87(2)(b) informed the medical provider that his head was “slammed in to ground by police officer” (see privileged medical file).

CCRB Statement

§ 87(2)(b) was interviewed by the CCRB at § 87(2)(b) in Brooklyn on June 4, 2014 (encl. F1-6).

On February 15, 2014, § 87(2)(b) entered the Nevins Street train station in Brooklyn to travel to the Crown Heights Utica Avenue station with his camera. § 87(2)(b)'s camera was a digital camera with a battery door on the bottom of the camera and a string attached to it. When § 87(2)(b) arrived at the Crown Heights Utica Avenue train station, at approximately 5:50 p.m., he noticed PO Dai, who he identified by name and described as a 5'2" Asian male dressed in uniform, with a civilian, identified by the investigation as § 87(2)(b). They were on the platform and PO Dai stood in front of § 87(2)(b) who was sitting. § 87(2)(b) had his hands behind his back. § 87(2)(b) could not tell if § 87(2)(b) was handcuffed. § 87(2)(b) was standing approximately 30 feet away from § 87(2)(b) and PO Dai. He immediately began filming the interaction. When he started filming, he observed PO Rojas, who he identified by name and described as a 6'0" tall Hispanic male dressed in uniform, enter the platform. § 87(2)(b) could not recall if he saw PO Rojas on the platform prior to this moment.

PO Rojas looked at § 87(2)(b) filming him. PO Rojas then took out his cellphone and pointed the camera at § 87(2)(b). PO Rojas then began walking toward § 87(2)(b) and stepped within one foot of § 87(2)(b) and held his cellphone in front of § 87(2)(b)'s camera, blocking the scope of § 87(2)(b)'s lens. § 87(2)(b) asked him to back up numerous times. PO Rojas told § 87(2)(b) that he was interfering with police activity, which § 87(2)(b) denied. PO Rojas grabbed the hand that § 87(2)(b) was filming with and placed that arm behind his back. § 87(2)(b) was holding the camera upright, but when PO Rojas placed his hand behind his back, the camera was turned upside down. PO Rojas held § 87(2)(b)'s arm in place behind his back and walked him up the stairs to the exit of the train station near Schenectady Avenue and Eastern Parkway. § 87(2)(b) said numerous times to PO Rojas that he was hurting him. PO Rojas did not respond. § 87(2)(b) did not have any interaction with PO Dai, who did not follow them out of the station.

Upon exiting the station, PO Rojas told § 87(2)(b) not to re-enter the station. § 87(2)(b) asked him why he was not allowed to enter the train station and iterated his right to film. As he was saying this, it occurred to § 87(2)(b) that he could live stream a video feed of his interaction with PO Rojas by using his Blackberry cellphone. He pulled out his cellphone. He still held his camera in his other hand. When he removed the cellphone, PO Rojas told him to put the cellphone away. § 87(2)(b) reiterated his right to film and attempted to unlock his cellphone to begin recording. He was not able to get his cellphone to function as a video camera.

At this point, PO Rojas stood two steps down on the subway entrance, while § 87(2)(b) stood on the street level looking downward at PO Rojas. There were civilians entering the subway and there were three or four people standing outside the station, but none of the civilians

said anything or seemed to be watching the exchange. At no point during the incident did a crowd gather. PO Rojas either hit the cellphone out of § 87(2)(b)'s hand or he grabbed it out of § 87(2)(b)'s hand. Later in the incident, § 87(2)(b) observed his cellphone lying on the ground next to him. At this time, § 87(2)(b) noticed that the battery door to his camera was open and he attempted to close it. PO Rojas stepped toward and behind § 87(2)(b) grabbed the camera, and began to pull it away, while § 87(2)(b) held onto the camera strap. PO Rojas did not give § 87(2)(b) any commands at this time. § 87(2)(b) asked if he was being detained or arrested. PO Rojas did not respond. § 87(2)(b) began to tell the other civilians who were standing nearby that he was being harassed by PO Rojas for filming the officer in the subway station. While § 87(2)(b) was speaking, PO Rojas continued to pull on the camera. PO Rojas kicked the sole and heel of § 87(2)(b)'s feet outward. § 87(2)(b) held the hand that did not have the camera by his side. PO Rojas grabbed the left inside thigh area of § 87(2)(b)'s pants and his shoulder. PO Rojas pulled on these areas to take him to the ground.

§ 87(2)(b) landed on his stomach, but did not recall where his hands landed when he hit the ground. He was not injured from this. § 87(2)(b) held his head up and called out to the people standing around to film the incident. He then repeated PO Rojas's name and shield number numerous times, which he gleaned from PO Rojas's shield. He felt pressure on his lower back which made him believe that PO Rojas was leaning his knee on his back. § 87(2)(b) put his hands behind his back and PO Rojas held his wrists. After he was handcuffed, PO Rojas used his hand to push § 87(2)(b)'s face into the ground. § 87(2)(b) did not know if he used an open palm or closed fist, what hand he used, or if he used both hands. § 87(2)(b) sustained a cut inside his mouth on his lower lip as a result. This cut bled into his mouth.

Soon after, PO Dai exited the train station. SGT Jolene Maldonado, who § 87(2)(b) identified by name and described as a white female in uniform, arrived. § 87(2)(b) informed her that he needed medical attention. She said okay and began speaking with the other officers.

§ 87(2)(b) was transported to the Transit District 32 stationhouse. § 87(2)(b) was taken to Kings County Hospital by EMS while he was in police custody. He did not recall what treatment he received, but he believed that his head was X-rayed. His lip did not require stitches and he was provided with a pain killer.

§ 87(2)(b) was taken to Brooklyn Central Booking where he was charged with OGA, disorderly conduct, resisting arrest, and trespassing.

When § 87(2)(b) received his property, which included his camera and cellphone, the video footage from his camera was deleted. § 87(2)(b) was able to retrieve the data. § 87(2)(b) did not see any officer delete his video. § 87(2)(b) contacted § 87(2)(b) via Facebook and provided him with the video footage that § 87(2)(b) took while § 87(2)(b) was being arrested.

Witness: § 87(2)(b)

- § 87(2)(b)

CCRB Statement

§ 87(2)(b) provided a statement over the telephone on September 23, 2014 (encl. F11) and § 87(2)(b) was interviewed at the CCRB on September 26, 2014 (encl. F7-10). § 87(2)(g)

On February 15, 2014, at approximately 6:00 p.m., § 87(2)(b) arrived at the § 87(2)(b) while on his way home. While he was on the platform, he did not notice any police activity. He left the platform to the mezzanine level via the staircase closest to the Schenectady Avenue exit. While he was walking up the stairs, he heard a male's voice yelling. When he turned around, he observed PO Rojas behind § 87(2)(b) walking up the stairs. PO Rojas held § 87(2)(b)'s right hand behind his back. § 87(2)(b)'s left hand was free. § 87(2)(b) was yelling loud enough for most of the platform to hear. § 87(2)(b) was not moving his left hand. § 87(2)(b) was yelling, "Why are you doing this? Is it because I was recording the police?" § 87(2)(b) was approximately 15 feet away from § 87(2)(b) and PO Rojas when he observed this. § 87(2)(b) continued through the turnstiles and up the stairs to exit the location. When he reached the top of the staircase that led outside, § 87(2)(b) stopped walking near the railing that separates the staircase from the street. From this vantage, he could see down the staircase into the station and the sidewalk in front of the staircase (see encl. D2). There were approximately five pedestrians watching the interaction on the sidewalk level.

PO Rojas walked § 87(2)(b) out of the station to sidewalk level and told him that he was not allowed to re-enter the station as he would be arrested. § 87(2)(b) said that he did not care and that he was going to re-enter. § 87(2)(b) held in his hand a Blackberry phone and nothing else. PO Rojas walked down the staircase to re-enter the station. § 87(2)(b) who appeared to be filming on his Blackberry, walked two steps into the station. PO Rojas was midway down the stairs, and turned around and walked up the stairs. § 87(2)(b) could not recall if PO Rojas walked § 87(2)(b) up the stairs or if § 87(2)(b) walked himself up the stairs, but PO Rojas and § 87(2)(b) ended up on the sidewalk in front of the stairs. PO Rojas grabbed § 87(2)(b)'s arms and attempted to pull § 87(2)(b) to the ground. § 87(2)(b) resisted the motion by making his body rigid. PO Rojas threw his weight downward to pull § 87(2)(b) to the ground. § 87(2)(b) landed on the ground on his stomach. § 87(2)(b) did not see his face make contact with the cement. § 87(2)(b) attempted to pull his hands away from PO Rojas and PO Rojas pulled his hands together. PO Rojas handcuffed § 87(2)(b). § 87(2)(b) started yelling the officer's name and telling the bystanders to film the incident. § 87(2)(b) did not see PO Rojas slam § 87(2)(b)'s face in the concrete. § 87(2)(b) observed PO Rojas pick up § 87(2)(b)'s cellphone off the ground and place it in his own pocket. The battery had come out of the cellphone and PO Rojas also put that in his pocket. § 87(2)(b) did not hear PO Rojas say anything during the arrest. Once he was handcuffed, § 87(2)(b) did not resist. § 87(2)(b) was approximately ten feet away from § 87(2)(b) and PO Rojas.

§ 87(2)(b) began to film the incident approximately 30 seconds after § 87(2)(b) was handcuffed. § 87(2)(b) observed a small amount of blood come out of § 87(2)(b)'s mouth. He did not see how § 87(2)(b) sustained this injury, but § 87(2)(b) assumed it was from when he was taken to the ground. PO Dai exited the station and assisted PO Rojas in standing § 87(2)(b) up. PO Dai then returned to the station. § 87(2)(b) had not seen PO Dai before this. § 87(2)(b) left shortly thereafter as he did not want to be arrested for filming the officers. He observed an unmarked police van arrive at the location, but he did not see the officers within.

Attempts to Contact Civilians

§ 87(2)(b) was identified by the investigation as the individual depicted in the video as being summonsed through PO Dai's memo book entry and from the summons at the time and location of the incident. A search of Lexis Nexis, conducted on April 18, 2014, provided one address (which matched the address on the summons), telephone, and email address for § 87(2)(b). On April 21, 2014, a call was placed to § 87(2)(b)'s telephone number and it was determined that the phone was out of service. On April 21, and April 28, 2014, "please call"

letters were sent to § 87(2)(b) and the USPS has not returned these letters as undeliverable. On April 21, 2014, a “please call” letter was emailed to § 87(2)(b) but the letter was returned as undeliverable. On June 4, 2014, fieldwork was conducted at § 87(2)(b)'s address and “please call” letters were left. To date, § 87(2)(b) has not responded to these contact attempts.

Video Evidence

YouTube Video

The video taken by § 87(2)(b) on February 15, 2014 was found on YouTube (encl. G1-4). The last two minutes of the video was taken from a video that was provided in its entire length by § 87(2)(b) and is described in the next section.

For the first 4 minutes and 14 seconds, § 87(2)(b) (who is filming) stands approximately thirty feet away from PO Dai and § 87(2)(b) has his hands behind his back as though they are handcuffed and he is sitting on a bench. PO Dai stands to the side of § 87(2)(b) facing the camera. Neither PO Dai nor § 87(2)(b) change position or say anything to § 87(2)(b).

The camera pans back from the right and captures a staircase behind PO Dai and § 87(2)(b). In the background a uniformed officer, identified by § 87(2)(b) and the investigation as PO Rojas, walks down the staircase on the right hand side, toward PO Dai and § 87(2)(b).

PO Rojas walks to § 87(2)(b) and PO Dai. PO Rojas looks in the direction of the camera again. PO Rojas removes his cellphone and points the cellphone in § 87(2)(b)'s direction.

PO Rojas begins walking over. PO Rojas walks for seven seconds without pause toward the camera holding his cellphone in front of him. He stops walking and holds the cellphone directly in front of the lens of the camera. The camera pans down to PO Rojas's shield. PO Rojas moves his cellphone in front of his shield. The camera moves up and the cellphone follows the lens. The camera moves sporadically back and forth and the cellphone follows each movement.

§ 87(2)(b) says to PO Rojas, "You're violating my personal space, could you back up?" PO Rojas speaks over § 87(2)(b) and says, "You're violating my personal space, too." During this exchange, the camera continues to move sporadically and the cellphone continues to follow it. § 87(2)(b) asks, "What's your name and shield number?" PO Rojas responds, "What's your name?" § 87(2)(b) repeats his question and PO Rojas repeats his response. The camera and cellphone continue to track one another.

§ 87(2)(b) says, "What? You pick and choose what part of your Patrol Guide that you want to read? I am a citizen and I asked you for your name and shield number and command."

PO Rojas states, "Why are you filming me? Why are you violating my personal space?" § 87(2)(b) responds, "You walked thirty feet to me." PO Rojas states, "That's not...How do you know that that's thirty feet?" § 87(2)(b) responds, "I just counted. It's thirty feet." PO Rojas begins to speak, but § 87(2)(b) speaks over him saying, "What is your name and shield number?" PO Rojas responds, "What is your name?"

§ 87(2)(b) responds, "You're not going to tell me?" PO Rojas states, "It's right there on my badge. If you read it, you will know." § 87(2)(b) responds, "Again, you pick and choose what parts of your Patrol Guide you want to read?" PO Rojas's mouth is captured in the frame as he says, "I am not pickin', you pickin'. My badge number is right there."

§ 87(2)(b) responds, "There is a part about when cit—when contact with civilians. Did you read that part?" As § 87(2)(b) is saying this, PO Rojas's lower face is in the frame. PO Rojas says, "There's a part which says you cannot invade a police officer's personal space." As PO Rojas speaks, the cellphone moves upward and captures more of PO Rojas's face.

§ 87(2)(b) responds, "You get a lot of command disciplines, or just a few?" PO Rojas responds, his mouth captured in the frame with his cellphone held to the left side of his face, "I don't know, you tell me? Have you ever been arrested?" PO Rojas' finger around the cellphone is

within the frame. The camera moves slightly capturing a portion of PO Rojas' shield, which is illegible on the camera. § 87(2)(b) asks, "Whatchya name? Rojas, 23404." The entire frame is black and slightly fleshy hues of PO Rojas's finger at close proximity.

§ 87(2)(b) states, "Please get out of my personal space." PO Rojas states, "You're invading our personal space, that is called OGA." PO Rojas's mouth is in the frame at this point. § 87(2)(b) responds, "Yeah, then write a summons for it." PO Rojas states, "Maybe I should arrest you for it." § 87(2)(b) responds, "Yeah, try it." PO Rojas says, "Why not?" § 87(2)(b) responds, "Try it. Try it, Rojas. Try it. Do you have a home?" PO Rojas responds, "Yes, I have a home." § 87(2)(b) says, "Is it paid off?" PO Rojas says, "Yeah, it is." § 87(2)(b) says, "Please arrest me." The screen is black at this point with PO Rojas's body seemingly in close proximity, thus reducing the amount of light that the lens gathers.

§ 87(2)(b) says, "Do it now. Please?" PO Rojas responds, "I am not going to make it that easy for you." § 87(2)(b) responds, "Right, right." The screen is still black at this point.

The camera shifts position. PO Dai and § 87(2)(b) are depicted on the right side of the screen. PO Dai is looking at the pad of paper and is apparently writing. § 87(2)(b) is still sitting on the bench in the same position. § 87(2)(b) says, "Again, back the fuck up and get out of my personal space."

The camera moves to the other side of the bench that was originally to the right of the frame. The camera is at the center point of the bench. PO Rojas, off screen, says, "What did you say?" § 87(2)(b) responds, "Back the fuck up and get out of my personal space." PO Rojas responds, off screen, "Don't curse me. Don't curse me. I am not disrespecting you." The camera pans rapidly to the left. The screen briefly gets dark. PO Rojas's body and badge can briefly be seen in close proximity to § 87(2)(b) responds, "Yes you are. You are in my personal space. Your business is over there. Get away from me." As he says this, the camera moves around to the other side of the bench. PO Rojas is off screen.

On the other side of the bench, in the frame of the camera PO Dai and § 87(2)(b) are depicted sitting in the same position. § 87(2)(b) says, "Again, Officer Rojas, can you back the fuck up?" PO Rojas says, "That is three times that you have cursed. I never cursed you once." § 87(2)(b) states, "That's two. Back the fuck up. That's three." During this conversation the camera is trained on PO Dai and § 87(2)(b) PO Dai is still writing in his book.

A hand enters the frame of the camera at close range. The camera turns and PO Rojas's face enters and fills the frame. A cellphone comes between the camera and PO Rojas's face. § 87(2)(b) says, "Officer Rojas, this is bordering on official harassment. Do you really want to do this?" PO Rojas states, "You're already harassing us both."

§ 87(2)(b) says, "Do you really want to do this? Do you need a superior to instruct you? Do you need more training on what you should do when someone is photographing you? Huh?" While § 87(2)(b) is speaking, PO Rojas's hand and cellphone keep entering the frame, blocking his face. PO Rojas responds, "If you are photographing me, why can I not photograph you?" § 87(2)(b) responds, "You're in my personal space. I did not come over to your personal space. You walked thirty feet to me. You can count the tiles. Thirty feet you walked to me."

The cellphone moves out of the view of PO Rojas's face. PO Rojas's face fills the screen as he says, "Okay this is my station. Right here—" § 87(2)(b) cuts him off and says, "This is not your station. You're a public servant. This belongs to the public and you're a servant and you're disrespecting me and you're harassing me. Now again, can you back the fuck up?" As he says this the camera turns to the left and only PO Rojas's arm is in the frame. PO Rojas says, "Okay now that is three times." § 87(2)(b) responds, "That is four times."

As PO Rojas says this, a black male civilian is standing, at approximately the same distance as PO Dai. He is not saying anything or moving. The camera moves rapidly and spins to a different position, filming the opposite subway track.

Video Taken by § 87(2)(b)

In the video taken by § 87(2)(b) on February 15, 2014 (encl. G5), the frame begins outside of the subway station near a stair well. PO Rojas is leaning over § 87(2)(b) who is on the ground on his stomach. PO Rojas appears to be handcuffing § 87(2)(b) says, "His name is Officer Rojas."

PO Dai exits the train station and walks directly to PO Rojas. Soon after, PO Rojas asks, "Where's the other guy?" The camera pivots to the left and PO Dai is the only person visible. PO Dai is bent over near § 87(2)(b) but only his right half is visible. The camera pivots back to the right and captures PO Dai and PO Rojas picking up § 87(2)(b) into a sitting position. PO Dai is standing in front of § 87(2)(b) and PO Rojas is standing behind. The officers then stand § 87(2)(b) up. § 87(2)(b) is facing the left of the frame with officers on both sides of him. § 87(2)(b) says, "Look, my mouth is bleeding, right?"

One of the bystanders asks, "Why is his mouth bleeding?" § 87(2)(b) states that PO Rojas threw him on the floor and hit his face into the concrete. A bystander walks into the frame and stands about three feet away from PO Rojas and § 87(2)(b). He asks what precinct the officer is from. § 87(2)(b) responds, "TD32. His shield number is 23404. His name is Rojas." As § 87(2)(b) says this, the bystander walks into the subway station. § 87(2)(b) continues to say he was arrested for recording the police officer. § 87(2)(b) responds that he saw that. PO Rojas states to § 87(2)(b) that he was arrested for harassing a police officer.

MTA Footage

The MTA footage of the § 87(2)(b) taken on February 15, 2014 between 6:00 p.m. and 6:03 p.m. (encl. G6-7) depicts the turnstiles and the entryway to the Schenectady Avenue side of the station and each video possesses time stamps.

Turnstile camera

At 18:01:50, § 87(2)(b) who is wearing a green winter jacket, can be seen in deep focus walking up the stairs. Behind § 87(2)(b) PO Rojas comes into view at the top of the stairs. PO Rojas is standing directly behind § 87(2)(b). They exit the turnstiles (second from the left). They turn to their right and PO Rojas's left hand is on § 87(2)(b)'s back. § 87(2)(b)'s right hand and PO Rojas's right hand are both obscured by their bodies. They exit at the left side of the screen.

Entryway camera

At 18:01:58, PO Rojas and § 87(2)(b) enter the frame from the bottom left side. PO Rojas has his left hand on § 87(2)(b)'s back and his right hand is obscured by their bodies. PO Rojas has a silver object in his left hand, which looks like a camera and which is pressed against § 87(2)(b)'s back. They walk up the stairs and disappear from view.

At 18:02:27, PO Rojas re-enters the frame from the staircase. He gets to the base of the stairs, facing away from the exit, but toward the camera. Approximately two paces away from the base of the stairs, PO Rojas turns backward and looks over his right shoulder. PO Rojas walks three more paces, stops and turns around. He walks back up the stairs. § 87(2)(b) was not visible in the frame at this time.

NYPD Statements:

Subject Officer: PO EFRAIN ROJAS

- § 87(2)(b) old, male, Hispanic, 5'9", 205lbs., black hair, and brown eyes.
- On February 15, 2014, PO Rojas was assigned to transit patrol with PO Renan Dai from 3:00 p.m. to 11:25 p.m. He was dressed in uniform and was working on foot. At the time of incident, PO Rojas's shield number was 23404 but has since changed to 19553.

Memo Book

At 4:30 p.m. PO Rojas arrived at Utica Avenue. At 5:30 p.m., he began assisting PO Dai with a summons for theft of service at the Utica Avenue station. At 5:50 p.m., one black male was stopped for disorderly conduct. At 5:55 p.m., one black male was ejected from the subway system for disorderly conduct. At 6:05 p.m., PO Rojas was holding suspect § 87(2)(b) § 87(2)(b) interfered with a police investigation while the arresting officer was issuing a summons to a second party for theft of services. § 87(2)(b) used obscene language and began to get violent causing public alarm and a crowd to gather. § 87(2)(b) did resist arrest by folding his arms and refusing to be cuffed. From 6:00 p.m. to 10:00 p.m., arrest processing (encl. H1-3).

Complaint Report and Arrest Report

§ 87(2)(b), § 87(2)(a) CPL 160.50

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Criminal Court Complaint

§ 87(2)(b), § 87(2)(a) CPL 160.50

§ 87(2)(b)

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§ 87(2)(b)

CCRB Statement

PO Rojas was interviewed at the CCRB on July 18, 2014 (encl. H15-18).

On February 15, 2014, at approximately 5:55 p.m., PO Rojas and PO Dai were patrolling the 3/4 subway line at the § 87(2)(b) They arrived at the station via the subway and had been at this station since 4:30 p.m. While patrolling, PO Dai observed § 87(2)(b) enter the subway station without paying a fare. PO Dai radioed to PO Rojas requesting assistance with summoning § 87(2)(b) PO Dai and PO Rojas handcuffed § 87(2)(b) and set him down on a bench on the subway platform with the intention of issuing him a summons. § 87(2)(b) was calm. PO Rojas took § 87(2)(b)'s identification to run a client identification check. PO Rojas performed this check by exiting the transit system to street level and calling his command via telephone. This check took seven to ten minutes to perform. At the time that he left the train station, PO Rojas had not observed § 87(2)(b) and had had no

interactions with § 87(2)(b). Upon returning to the subway platform, where PO Dai and § 87(2)(b) were waiting, PO Rojas gave PO Dai § 87(2)(b)'s identification and the final disposition of the client identification check.

While standing with PO Dai, PO Rojas observed § 87(2)(b) “hovering” in the area. PO Dai did not mention anything to PO Rojas regarding § 87(2)(b). PO Rojas could not estimate how far away § 87(2)(b) was from him, noting only that he was “a few feet, I suppose, I’m not too sure.” PO Rojas believed that § 87(2)(b) was an Emotionally Disturbed Person (EDP). PO Rojas believed that he was EDP as the rest of the civilians in the train station were entering and exiting train cars and the system, while § 87(2)(b) was “hovering” near the officers “as though [the officers] were doing something wrong.” He described “hovering” as walking back and forth and leaning against a subway column. He also observed § 87(2)(b) holding a camera which was small and similar to a digital photographing camera. § 87(2)(b) was not speaking at this time. PO Rojas intended to approach § 87(2)(b) in order to ascertain if he needed assistance and to determine why he was there. PO Rojas was uncertain as to why § 87(2)(b) was recording them and he did not know whether or not § 87(2)(b) had a weapon. When asked why he thought § 87(2)(b) had a weapon, he responded that he did not know what § 87(2)(b) could possibly have on his person. When asked if he observed anything specifically about § 87(2)(b) that raised his suspicion that he did have a weapon, PO Rojas said that his mannerism of staying in the vicinity and watching and filming the officers while everyone else on the platform glanced at the officers, but kept moving is what drew his attention to § 87(2)(b) and what made him believe that § 87(2)(b) could potentially have a weapon. PO Rojas observed § 87(2)(b) for two or three minutes before approaching him.

PO Rojas removed his cellphone and set it up to record the interaction. He said that he did this so that he had his own record of what occurred, believing that when civilians film officers, they have control of the context and interpretation and he wanted his own independent record of the interaction. PO Rojas forgot to press the record function on his telephone and thus did not have any video to provide. PO Rojas did not converse with his partner regarding his observation of § 87(2)(b)'s behavior.

Upon approaching § 87(2)(b), § 87(2)(b) asked for his name and shield number. PO Rojas pointed at his shield and name plate on his chest, which was clearly displayed and unobstructed by PO Rojas. § 87(2)(b) “may have” asked PO Rojas for his name and shield two times or more. PO Rojas did not state his name and shield number aloud as he felt that since § 87(2)(b) had a recording device, it would be easier for him to record his name and shield with the video camera. § 87(2)(b) told PO Rojas to “get the fuck out of his face.” PO Rojas asked § 87(2)(b) to leave the station approximately three or four times. § 87(2)(b) referenced the Patrol Guide and asked PO Rojas if he knew about the Patrol Guide. PO Rojas could not recall if § 87(2)(b) ever asked him about his disciplinary history. PO Rojas could not recall if he threatened to arrest § 87(2)(b) for OGA. PO Rojas could not recall if he ever questioned § 87(2)(b) regarding his arrest history. PO Rojas did not recall if § 87(2)(b) had responded verbally to these requests. § 87(2)(b) did not move to leave the station. Several individuals, the exact number PO Rojas could not recall, were observing this interaction. None of the individuals were saying anything to § 87(2)(b) and PO Rojas could not recall if § 87(2)(b) was saying anything to these people. The onlookers were standing “very close” to PO Rojas and § 87(2)(b) but PO Rojas could not estimate the distance. During this interaction, PO Dai was writing a summons to § 87(2)(b) and did not interact with § 87(2)(b).

PO Rojas decided to eject § 87(2)(b) from the subway station for disorderly conduct. § 87(2)(b) was in violation of disorderly conduct when he cursed and yelled at PO Rojas, causing the crowd to form. PO Rojas decided not to summons § 87(2)(b) but to eject him from the

station, as he was preoccupied with the stop and summons of § 87(2)(b). PO Rojas grabbed § 87(2)(b)'s upper arm and lower arm and walked him up the stairs and out of the transit system to street level. Upon getting to the top of the stairs, PO Rojas told § 87(2)(b) that he was not allowed to re-enter that specific station without being arrested for trespassing. § 87(2)(b) responded that PO Rojas was going to have to arrest him.

PO Rojas walked back into the subway station. Upon reaching almost the end of the stairway, PO Rojas turned around and observed § 87(2)(b) within less than an arm's length behind him with his camera up. § 87(2)(b) did not say anything at that time. PO Rojas could not recall if § 87(2)(b) had anything else in his hands. PO Rojas walked § 87(2)(b) back out of the station. He did not recall if he made physical contact with § 87(2)(b) when he removed him from the station the second time. PO Rojas told him to place his camera in his pocket as he was under arrest. § 87(2)(b) did not place his camera in his pocket, but PO Rojas could not recall if he said anything at that point. PO Rojas attempted to handcuff § 87(2)(b) when they reached the top of the stairs. § 87(2)(b) tensed his § 87(2)(b). PO Rojas did not remember where § 87(2)(b)'s arms were in relation to his body when he was tensing his § 87(2)(b). PO Rojas pulled § 87(2)(b) to the ground. § 87(2)(b) was laid on his stomach and PO Rojas handcuffed him there. PO Rojas could not recall if he put his knee in § 87(2)(b)'s back to handcuff him. It took PO Rojas approximately 3 or 4 minutes to handcuff § 87(2)(b). PO Rojas denied ever hitting § 87(2)(b)'s head or face into the ground. § 87(2)(b) continued to tense his arms while he was on the ground. PO Rojas did not know if § 87(2)(b) was still holding the camera while he was on the ground. PO Dai remained inside of the transit system writing the summons for § 87(2)(b).

PO Dai emerged from the transit system after PO Rojas had handcuffed § 87(2)(b) and after PO Rojas placed the call for additional units. PO Rojas did not recall what other officers arrived at the scene. SGT Maldonado, who was PO Rojas's supervisor, arrived. SGT Maldonado asked PO Rojas if he was alright and told him to lodge § 87(2)(b) into the van.

PO Rojas transported § 87(2)(b) to the stationhouse in a prisoner van. He did not know who drove the van. PO Rojas noticed that § 87(2)(b)'s lip was swollen. He did not see § 87(2)(b) bleeding at any point. PO Rojas did not know how § 87(2)(b) sustained these injuries.

Upon arriving at the stationhouse, PO Rojas vouchered cash that was in § 87(2)(b)'s possession for safe-keeping. PO Rojas also vouchered § 87(2)(b)'s camera for safe-keeping. PO Rojas believed that the camera was vouchered as § 87(2)(b) returned on a different date to pick it up. The camera was not vouchered as arrest evidence. PO Rojas never looked through the camera, nor did he see any other officer look through the camera. PO Rojas never deleted any video from the camera. PO Rojas did not recall EMS arriving for § 87(2)(b) nor did he recall § 87(2)(b) requesting medical attention. PO Rojas did not go to the hospital with § 87(2)(b) and he did not recall § 87(2)(b) going to the hospital.

PO Rojas reviewed the arrest report. § 87(2)(b) was in violation of resisting arrest when he tensed his arms during his apprehension. § 87(2)(b) was in violation of OGA when he was "hovering" near PO Rojas and PO Dai when they were writing a summons to § 87(2)(b). § 87(2)(b) was in violation of trespassing when he attempted to re-enter the transit system after being told by PO Rojas not to re-enter. § 87(2)(b) was in violation of disorderly conduct when he was cursing at PO Rojas on the subway platform. He was in violation of disorderly conduct for fighting and violent behavior when he was at the top of the stairs resisting arrest. PO Rojas described § 87(2)(b)'s tensing up of his arms as violent. § 87(2)(b) was not engaged in violent or fighting behavior when he was on the platform.

PO Rojas reviewed the video provided by § 87(2)(b) which was posted on YouTube. PO Rojas had seen the video prior. PO Rojas identified himself and PO Dai in the footage. PO Rojas did not change his testimony upon watching the video. PO Rojas did not recall placing his

cellphone in front of the lens of the camera. PO Rojas did not see the crowd of people he had previously referred to that were in the area watching the video. The crowd was behind the camera and closer to § 87(2)(b) and the officer. PO Rojas did not see, in the footage, the actions that he described as hovering. He said that he did not recall if this action occurred before the filming of the footage, but his attention was drawn to his previous statement that he had seen § 87(2)(b) only after running the client identification check. When he was coming down the stairs in the footage, he was returning from the client identification check. PO Rojas then stated that he could not recall at what point he observed that behavior.

PO Rojas viewed the MTA subway footage of the stairwell leading out of the station. He identified himself in the video as he walked § 87(2)(b) out of the station. PO Rojas was asked about his earlier statement that § 87(2)(b) followed him closely, within arm's length, into the transit system. PO Rojas acknowledged that he did not see § 87(2)(b) in the frame of the camera when he reached the bottom of the stairs, but he maintained that § 87(2)(b) had followed him closely into the station.

PO Rojas reviewed the Criminal Court Complaint. PO Rojas recognized the document. When asked what "very close proximity to" meant, PO Rojas explained that he was not referring to spatial proximity, but the amount of fear for his safety that he had.

Witness Officer: PO RENAN DAI

- § 87(2)(b) *old, male, Asian, 5'6", 165lbs., black hair, and brown eyes.*
- *On February 15, 2014, PO Dai worked from 3:00 p.m. to 11:35 p.m. He was assigned to transit patrol with PO Rojas and he was dressed in uniform.*

Memo Book

At 5:50 p.m., PO Dai observed § 87(2)(b) enter the subway system without paying his fare through an exit gate. At 5:55 p.m., PO Dai issued a summons to § 87(2)(b). At 6:10 p.m., PO Dai received a call for assistance which he responded to and at 6:20 p.m. he arrived at the stationhouse. At 7:37 p.m. PO Dai took § 87(2)(b) to § 87(2)(b) (Encl. I1-3).

Summons

On February 15, 2014, at approximately 5:50 p.m., PO Dai issued § 87(2)(b) a summons for fare evasion at the § 87(2)(b) in Brooklyn (encl. I4).

CCRB Statement

PO Dai was interviewed at the CCRB on July 18, 2014 (encl. I5-6). § 87(2)(g)

On February 15, 2014, at approximately 5:50 p.m., PO Dai was standing on the platform with § 87(2)(b) awaiting PO Rojas's client ID check. While he was standing there, he observed § 87(2)(b) filming the interaction and he did not notice anything further about § 87(2)(b). PO Dai did not approach nor did he talk to § 87(2)(b). When PO Rojas returned with the final disposition for the client identification check, PO Rojas gave PO Dai § 87(2)(b)'s identification. PO Dai immediately began writing a summons to § 87(2)(b). PO Dai did not discuss with PO Rojas § 87(2)(b)'s behavior or actions. PO Dai did not pay attention to his partner's interaction with § 87(2)(b). PO Dai focused on writing § 87(2)(b) the summons. PO Dai heard voices that were raised, but he was not alarmed by these voices nor was he concerned for his partner's safety at any point. PO Dai did not notice a crowd of people gathering to watch the interaction. PO Dai did not hear what the voices were saying. He did not look up at his partner at any point. PO Dai realized that PO Rojas was not present when the noise from their voices ceased.

PO Dai was first alerted to PO Rojas's activities when PO Rojas radioed for additional units at the § 87(2)(b). PO Dai had not finished writing § 87(2)(b) a summons at this time. PO Dai walked § 87(2)(b) to the mezzanine level where he left him, rear handcuffed, while he assisted PO Rojas. Upon exiting the subway system and entering the street level, PO Dai observed § 87(2)(b) in handcuffs on the ground. PO Dai assisted PO Rojas in setting § 87(2)(b) up right. PO Dai then re-entered the subway system and finished writing § 87(2)(b) a summons.

PO Dai did not know why § 87(2)(b) was arrested. He saw blood in a blister on the inside of § 87(2)(b) lower lip. He did not see § 87(2)(b) bleeding from the mouth. He did not know how § 87(2)(b) sustained this injury. He did not see PO Rojas hit § 87(2)(b)'s face into the ground. He did not vouch for any property and he did not search § 87(2)(b)'s camera nor did he see any other officer do so.

Witness Officer: SGT JOLENE MALDONADO

- § 87(2)(b) *old, female, Hispanic, 5'7", 155lbs., brown hair, and brown eyes.*
- *On the date of incident, SGT Maldonado was assigned to the conditions team without a partner from 4:30 p.m. to 2:07 a.m. She was dressed in uniform and was not assigned to a motor vehicle.*

Memo Book

At 5:55 p.m., a call was placed for additional units at the back end of the § 87(2)(b). At 6:05 p.m., § 87(2)(b) date of birth § 87(2)(b), was placed under arrest for § 87(2)(b). At 6:30 p.m., SGT Maldonado returned to the command. At 6:45 p.m., EMS was called for § 87(2)(b). At 7:00 p.m. she was assigned as DI Davidson's operator (encl. J1-3).

CCRB Statement

SGT Maldonado was interviewed at the CCRB on September 12, 2014 (encl. J4-5).

On February 15, 2014, at approximately 5:55 p.m., SGT Maldonado received a radio call from PO Rojas for additional units to the back end of the § 87(2)(b). SGT Maldonado responded with DI Davidson at Utica Avenue at 6:05 p.m., with additional officers to act as transport. She did not recall who these officers were. Upon arriving, PO Rojas was standing with § 87(2)(b) and PO Dai at the top of the subway station stairs. § 87(2)(b) was in handcuffs. SGT Maldonado did not observe any injuries on § 87(2)(b) and she did not observe his apprehension. She could not recall if a crowd was assembled at the scene. PO Rojas explained to SGT Maldonado that § 87(2)(b) was interfering with the summoning of a third party. SGT Maldonado was the verifying officer. She explained that verifying the arrest only required that she listen to the arresting officer's description of the offense to insure that it is a Penal Law offense. She did not recall what § 87(2)(b) was ultimately charged with, but she recalled that she verified, following the above process, that § 87(2)(b) had violated the Penal Law.

She did not transport § 87(2)(b) and PO Rojas back to the stationhouse. She did not search § 87(2)(b)'s camera and she did not see any officer search his camera.

SGT Maldonado went to the holding cell area where § 87(2)(b)'s handcuffs were removed. § 87(2)(b) then told her that he had a laceration in his mouth and he pulled his lower lip down exposing the inner side of it. She observed a laceration without blood. SGT Maldonado could not recall who called EMS, but she knew that EMS was called. She did not have any further interaction with § 87(2)(b).

IAB Case file

A request was sent to IAB June 23, 2014 to obtain a copy of their case file. IAB's investigation is still pending (encl. N35-36). SGT Mendez, the investigating officer for this case, was contacted on December 4, 2014, and he stated that he had taken no action on the case as he was waiting for the District Attorney's office to determine if they were going to be prosecuting the case (encl. M17).

Medical Records

§ 87(2)(b) was treated at § 87(2)(b) on § 87(2)(b) while he was in police custody. He was diagnosed with a 2 millimeter laceration to the mucosal surface of his lower lip and an abrasion to his chin. The laceration did not need stitches (see privileged medical file).

Arrest for Incident and Disposition

- On July 17, 2014, all criminal charges against § 87(2)(b) in connection with this incident were dismissed by the District Attorney (encl. L1).

Status of Civil Proceedings

- § 87(2)(b) filed a Notice of Claim with the City of New York, claiming physical injuries to his face, head, mouth, and torso and seeking \$2,500,000.00 as redress (encl. L9-13). There is no 50H hearing scheduled as § 87(2)(b) did not file the complaint with an attorney (encl. L14).

Civilians Criminal History

- As of October 3, 2014, Office of Court Administration records reveal no criminal convictions for § 87(2)(b) in the last 10 years (encl. L1-8).

Civilian's CCRB History

- § 87(2)(b) has filed the following CCRB complaints (encl. C2):

- § 87(2)(b) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Subject Officer's CCRB History

- PO Efrain Rojas has been a member of the service for three years and there are no substantiated CCRB allegations against him. This is the first CCRB complaint against PO Rojas (encl. C1).

Conclusion

Identification of Subject Officers

PO Rojas acknowledged interacting with § 87(2)(b) on the date of incident and he identified

himself in the video footage taken by § 87(2)(b). Therefore allegations A, B, C, D, E, and H were pled against him.

§ 87(2)(b) did not see the officer who searched his cellphone and deleted the videos. None of the officers interviewed acknowledged deleting the video. Therefore, allegations F and G were pled against an officer.

Investigative Findings and Recommendations

Allegation A—Discourtesy: PO Efrain Rojas acted discourteously to § 87(2)(b)

The video footage corroborates § 87(2)(b)'s statement that PO Rojas walked from several feet away to stand directly in front of § 87(2)(b)'s camera in close proximity, with his cellphone pointed at § 87(2)(b). PO Rojas then engaged in bantering with § 87(2)(b) regarding his right to film, turning each question that § 87(2)(b) asked into a similar question posed to § 87(2)(b) without answering the former's question. This bantering included questioning § 87(2)(b) about his arrest history, threatening to arrest him for OGA, and asking why, if § 87(2)(b) could film him, he could not film § 87(2)(b). PO Rojas followed § 87(2)(b)'s camera lens with his cellphone during the interaction.

PO Rojas, in his CCRB interview, stated that he believed that § 87(2)(b) was an EDP as he was "hovering" and filming the officers performing their work functions. He took out his cellphone to record § 87(2)(b) recording him as he wanted to have his own independent record of the interaction. PO Rojas did not recall the specifics of the conversation, but he acknowledged that he was the officer in the video who engaged in the back and forth with § 87(2)(b). PO Dai did not see this interaction as he was focused on writing a summons.

Patrol Guide Procedure 203-09 (encl. B1) Officers are to be courteous and respectful in their interactions with civilians.

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation B—Abuse of Authority: PO Efrain Rojas refused to provide his name and shield number to § 87(2)(b)

It is not disputed that § 87(2)(b) requested PO Rojas's name and shield number more than once during the interaction and that PO Rojas did not verbally respond to this request.

In the video footage taken by § 87(2)(b) on the subway platform, § 87(2)(b) asked PO Rojas for his name and shield number four times. PO Rojas responded to these requests by asking § 87(2)(b) for his name. At one point § 87(2)(b) said to PO Rojas, "What? You pick and choose what part of your Patrol Guide that you want to read? I am a citizen and I asked you for your name and shield number and command." PO Rojas responded to these requests by stating that his name and shield were on his shield. PO Rojas, at one point, moved his cellphone in front of his shield. The video never clearly captured PO Rojas's shield as PO Rojas's cellphone was in the way, or because the camera could not focus on it. PO Rojas never stated his name and shield number aloud. § 87(2)(b) eventually gleaned it from his shield.

PO Rojas acknowledged hearing the request for his name and shield number. He provided this by pointing at his shield. He did not state it aloud as he felt that § 87(2)(b)'s recording device would capture his name and shield better than if he stated it aloud. PO Rojas acknowledged that § 87(2)(b) asked for his name and shield number more than once.

Patrol Guide Procedure 203-09 (encl. B1) Members of the service are to clearly state their name and shield number to any person who asks.

Even though § 87(2)(b) was eventually able to glean PO Rojas's name and shield number, § 87(2)(b) clearly stated his desire for PO Rojas to verbally identify himself on the video. § 87(2)(g)

Allegation C—Abuse of Authority: PO Efrain Rojas ejected § 87(2)(b) from the subway system.

It is undisputed that the decision to eject § 87(2)(b) from the subway station was made by PO Rojas and that the actions which led to § 87(2)(b)'s ejection were solely in regards to his interaction with PO Rojas.

§ 87(2)(b) was filming the issuance of a summons, from several feet away, when PO Rojas approached him. § 87(2)(b) asked twice, "Could you please get out of my personal space?" PO Rojas responded, "You're violating my space." § 87(2)(b) told PO Rojas that the officer approached him. PO Rojas, after § 87(2)(b)'s second request not to invade his personal space, stated, "You're invading my personal space, that is called OGA." PO Rojas offered to arrest § 87(2)(b). After this interaction, § 87(2)(b) told PO Rojas to "back the fuck up" and to get out of his personal space. PO Rojas responded that if § 87(2)(b) had a right to film the officer, PO Rojas should be allowed to film him. At no point in the video does any other civilian interfere and at no point does the video depict a crowd forming. § 87(2)(b) did not observe the incident until § 87(2)(b) was already being ejected by PO Rojas.

PO Dai did not hear the specifics of the interaction. He was never concerned for PO Rojas's safety and he did not look up from the summons that he was writing to see what the interaction was. He did not see a crowd form.

PO Rojas stated that § 87(2)(b) told PO Rojas to "get the fuck out of his face." PO Rojas asked § 87(2)(b) to leave the station approximately three or four times. This statement was not corroborated by the video. He did this as § 87(2)(b)'s cursing was allegedly causing a crowd to form. He ejected § 87(2)(b) for violating disorderly conduct, as § 87(2)(b) had used profanity at him and caused a crowd to form.

MTA Rules 1050.9(c)(encl. B2-3) An individual is permitted to film in the subway system, but are prohibited from using ancillary equipment such as lights, reflectors, or tripods.

MTA Rules 1050.119 (encl. B32) An individual can be ejected from the transit system if the individual has violated the MTA rules of conduct.

People v. Baker, 2013 N.Y. Lexis 116 (encl. B16-20) The mere use of coarse language toward a police officer is not enough, alone, to constitute the public harm element required for disorderly conduct. An isolated exchange between a police officer and an individual, without any other aggressive action or extenuating circumstances, is not likely to constitute disorderly conduct. Likewise, the mere presence of spectators, without any indication that these spectators are likely to become involved in the dispute, is not enough to constitute disorderly conduct.

Patrol Guide Procedure 208-03 (encl. B22-31) An individual who is in a public space observing an arrest or the issuance of a summons, even if that person is filming, using coarse language, and requesting names and shield numbers, unless the safety of officers or other persons is directly endangered, should not be arrested.

§ 87(2)(g)

§ 87(2)(g)

Allegation D—Abuse of Authority: PO Efrain Rojas arrested § 87(2)(b)

After being ejected from the subway system, § 87(2)(b) attempted to continue filming PO Rojas with a Blackberry cellphone. PO Rojas, who was walking away from § 87(2)(b) into the system, turned around and arrested § 87(2)(b). PO Rojas attempted to take § 87(2)(b)'s camera from him and § 87(2)(b) held onto the camera string to ensure that PO Rojas did not take it. PO Rojas then took § 87(2)(b) to the ground and handcuffed him.

§ 87(2)(b) observed § 87(2)(b) be ejected from the station and PO Rojas tell him not to return. § 87(2)(b) walked two steps into the subway station filming PO Rojas. PO Rojas turned around and arrested § 87(2)(b).

The MTA footage shows § 87(2)(b) being ejected from the station and PO Rojas returning to the base of the stairs and walks five steps before turning to arrest § 87(2)(b).

PO Rojas considered § 87(2)(b) in violation of OGA when he was “hovering” and filming the officers before being ejected from the train station when he was approximately 30 feet away and not speaking. After he was ejected from the subway station, § 87(2)(b) attempted to re-enter the station within an arm’s length of PO Rojas. PO Rojas considered him in violation of trespassing. PO Rojas took § 87(2)(b) out of the station. PO Dai did not know why § 87(2)(b) was arrested and he did not see the arrest.

The criminal court complaint stated that PO Rojas was issuing a summons to an individual, when he observed § 87(2)(b) “in very close proximity to” PO Rojas and PO Dai. PO Rojas repeatedly asked § 87(2)(b) to step back and § 87(2)(b) refused. This assertion was not corroborated by the video. PO Rojas requested § 87(2)(b) to leave the train station and § 87(2)(b) refused to leave. The video, however, depicts PO Rojas asking § 87(2)(b) to leave the train station once and then only nine seconds later, PO Rojas physically escorts him out of the train station. PO Rojas escorted § 87(2)(b) out of the transit system and informed him that he could not come back. § 87(2)(b) continued to film PO Rojas and allegedly followed him closely back into the transit system.

All of the charges against § 87(2)(b) have been dismissed at the request of the DA.

It is well established that, in order to effect an arrest, an officer must have probable cause that the person committed an offense.

§ 87(2)(g)

Allegation E—Force: PO Efrain Rojas used physical force against § 87(2)(b)

It is not disputed that PO Rojas took § 87(2)(b) to the ground and handcuffed him. It is also undisputed that § 87(2)(b) sustained a laceration to the inside of his mouth.

§ 87(2)(b) stated that he received the laceration because PO Rojas, after handcuffing him, slammed his face into the concrete by placing a hand on the back of § 87(2)(b)'s head and pushing it forward while § 87(2)(b) was on the ground.

§ 87(2)(b) observed § 87(2)(b) taken to the ground, but he did not see § 87(2)(b)'s face make contact with the ground nor did he see how § 87(2)(b) sustained the laceration in his mouth.

PO Rojas denied hitting § 87(2)(b)'s face on the ground. PO Rojas did not know how § 87(2)(b) sustained the laceration. PO Dai was not present for § 87(2)(b)'s apprehension.

None of the video footage shows § 87(2)(b)'s apprehension.

§ 87(2)(g)

Allegation F—Abuse of Authority: An officer searched § 87(2)(b)'s camera.

Allegation G—Abuse of Authority: An officer damaged § 87(2)(b)'s property.

§ 87(2)(b)'s camera was vouchered when he was arrested. When his camera was returned, the video with his interaction with PO Rojas was deleted. § 87(2)(b) was able to recover the footage using online software. § 87(2)(b) did not see an officer search his camera.

PO Rojas acknowledged that he vouchered § 87(2)(b)'s camera, but he denied searching the camera and deleting the footage therein. § 87(2)(g)

Allegation H—Other Misconduct: PO Efrain Rojas intentionally made a false official statement in violation of Patrol Guide procedure 203-08.

PO Rojas stated that he approached § 87(2)(b) after observing him for two to three minutes, with the intention of determining whether § 87(2)(b) required assistance. PO Rojas stated that he requested that § 87(2)(b) leave the train station three to four times before ejecting him and that § 87(2)(b) caused a crowd to form on the subway platform. PO Rojas stated that, after ejecting § 87(2)(b) from the subway station, § 87(2)(b) followed him directly back into the subway station and that he was within arm's reach upon PO Rojas's re-entry.

§ 87(2)(b)'s video depicts PO Rojas entering the frame, and after only 45 seconds, approaching § 87(2)(b) with his cellphone out and blocking § 87(2)(b)'s camera. At no point does he ask § 87(2)(b) if he needs assistance, nor does he show any signs of concern for § 87(2)(b). PO Rojas asks § 87(2)(b) once to leave the station, and then nine seconds later he grabs § 87(2)(b) and escorts him out of the station. The video does not depict any crowd forming as a result of the incident, and PO Dai did not notice any crowd. PO Rojas explained that the crowd formed outside of the frame of the camera.

Patrol Guide Procedure 203-08 (encl. B21) prohibits officers from intentionally making a false official statement regarding a material fact.

§ 87(2)(g)

§ 87(2)(g)

The video footage also shows that PO Rojas did not request that § 87(2)(b) leave the station three to four times before ejecting him. It depicts PO Rojas asking once, and, nine seconds later, PO Rojas physically removes § 87(2)(b) from the station, § 87(2)(g)

§ 87(2)(g)

Team: One

Investigator:	<u>Nicholas Carayannis</u>	<u>December 4, 2014</u>
	Signature	Date

Supervisor:	<u></u>	<u></u>
	Title/Signature	Date

Reviewer:	<u></u>	<u></u>
	Title/Signature	Date

Reviewer:	<u></u>	<u></u>
	Title/Signature	Date